1401 H Street, N.W.
Suite 1020
Washington, D.C. 20005
Office 202/326-3815

Ameritech

DOCKET FILE COPY ORIGINAL

James K. Smith
Director
Federal Relations

June 23, 1997

EX PARTE OR LATE FILED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: **Ex Parte Presentation**
CC Docket 96-98

Dear Mr. Caton:

Please include the attached Americtech Position Paper on Shared Transport in the record of this proceeding.

Sincerely,

Information Industry Services
350 North Orleans
Floor 3
Chicago, IL 60654
Office 312/335-6648
Fax 312/595-1504

H. Edward Wynn
Vice President &
General Counsel

Ameritech

DOCKET FILE COPY ORIGINAL

May 22, 1997

Christine T. Pirik, Chief
Telecommunications Division
Public Utilities Commission of Ohio
Telecommunications Division
180 East Broad Street
Columbus, Ohio 43215-3793

Dear Chris:

As we discussed, enclosed is Ameritech's Position Paper on Shared Transport and the Unbundled Network Element Platform. I am also sending a copy by messenger to Bruce Bennett of AT&T.

If you have any questions about the paper or any other matter, please call me.

Sincerely,

H. Edward Wynn

Enclosure

cc: Bruce Bennett, AT&T

SHARED TRANSPORT AND THE UNBUNDLED NETWORK ELEMENT PLATFORM: AMERITECH'S POSITION PAPER

Introduction

This document provides an analysis of the current debate regarding the Interoffice Transport Element known as Shared Transport. In particular, the debate focuses on Shared Transport when it is used as part of the Combination of Network Elements which is provided for in the AT&T and Ameritech Interconnection Agreements (the "Interconnection Agreements") and which has been referred to as the "Network Element Platform."[1] As demonstrated below, Ameritech's definition of Shared Transport is consistent with the terms and conditions of the Interconnection Agreements, the Telecommunications Act of 1996 (the "Act") and applicable FCC Rules.[2] AT&T's definition of Shared Transport as "Common Transport" service is inconsistent with the Interconnection Agreement, the Act, and the FCC Rules.

Summary of Ameritech's Position

- The definition of Network Element requires access to a particular facility or equipment. The Act defines a Network Element as "a facility or equipment" used to provide a telecommunications service. A Network Element also includes features, functions, and capabilities that are

[1]The Network Element Platform is described in Schedule 9.3.4 of the Interconnection Agreements. Shared Transport is described in Schedule 9.2.4, Section 1 of the Interconnection Agreements.

[2]Those Rules are found at 47 C.F.R. Section 51.1 *et seq.*

provided by "such facility or equipment. . . "[3] Therefore, in order to obtain a "feature, function or capability," – as a Network Element – the requesting carrier must designate a discrete facility or equipment, in advance, for a period of time.

- A Network Element includes features, functions and capabilities provided by such element. Ameritech agrees that Network Elements should be broadly construed to include all features, functions and capabilities provided "by such facility."[4] However, the definition in the Act does not support an interpretation that a requesting carrier can purchase undifferentiated access to network capabilities, without purchasing access to a particular facility or equipment used to provide a telecommunications service. Obtaining on-demand, undifferentiated use of the functions and capability of the public switched network is the purchase of a service, not access to a Network Element. Such an interpretation would eliminate any difference between access to a Network Element or purchase of a service.
- The FCC Order recognizes the clear difference between a "Network Element" and "services." The FCC has correctly concluded that a Network Element is a "facility and not a service."[5] The FCC noted: "when interexchange carriers purchase unbundled elements from incumbents, they are not purchasing exchange access "services." They are

[3] Act, Section 3(29).

[4] *See* FCC Order at Paragraph 262.

[5] FCC Order at Paragraph 343.

purchasing a different product, and that product is the right to exclusive access or use of an entire element."[6] Likewise, in distinguishing between Network Elements and services, the FCC noted that a carrier purchasing access to Network Elements must pay for that facility, and faces a risk that it may not have sufficient demand for services "using that facility" to recoup its costs. In contrast, a carrier using Resale Services does not face this risk.[7]

- Common Transport is a service, not a Network Element. In addition to being a "facility or equipment" a Network Element must be unbundled.[8] Specifically, Shared Transport cannot include switching or other services.[9] AT&T's re-definition of Shared Transport to mean "Common Transport" is inconsistent with the definition of Shared Transport in the FCC Rules since Common Transport cannot be a Network Element because it is a service that includes switching. AT&T's requirements for "Common Transport" also violate the FCC Rules. The FCC Rules require Ameritech to provide Shared Transport to allow carriers to connect their Collocated facilities to such Shared Transport.[10] As AT&T admits, this cannot be done under its "Common Transport" requirements.

---

[6] FCC Order at Paragraph 358.

[7] See FCC Order at Paragraph 334.

[8] Act, Section 251(c)(3).

[9] Act, Section 271(c)(2)(B)(v).

[10] 47 C.F.R. Section 51.319(d)(2)(iii).

Local Exchange Competition: An Overview

The Act provides two basic methods of local exchange competition: Resale of local exchange service and facilities-based provision of local exchange service. As further described below, these methods are not mutually exclusive: although a local exchange provider may choose to offer local exchange service exclusively either on a Resale or facilities basis, a provider can use both methods at any point in time to provide local exchange service to its customers.

I. Resale

Resale enables a local exchange provider to quickly offer the same local exchange telecommunications services that an Incumbent Local Exchange Carrier (or "ILEC") offers.[11] For the ILEC, the primary difference between Resale and retail provision of telecommunications services is that the Reseller assumes (1) end user customer servicing responsibilities, *e.g.*, end user customer billing and on-going customer service, and (2) retail marketing responsibilities, e.g., advertising and pricing, related to providing local exchange service. In all other respects, what is provided by the ILEC to a Reseller and what the ILEC provides at retail to its own customers, is identical. For that reason, when a customer switches from an ILEC to a Reseller and keeps exactly

---

[11]The Act contains two Resale obligations. One Resale obligation, the duty to provide Resale at discounted ("wholesale") rates, applies only to ILECs. *See* Act, Section 251(c)(4). The other Resale Obligation, which applies to both ILECs and LECs, provides for Resale at retail rates. *See* Act, Section 251(b)(1). The Resale obligation discussed in this paper is the Section 251(c)(4) wholesale Resale obligation.

the same telecommunications services that the customer has at the time of the carrier change, the ILEC is only required to make certain record changes to the account to reflect that the Reseller will now provide billing and customer servicing for the customer.

Specifically, a Reseller has no obligation to design or engineer a local exchange network. Instead, it uses the ILEC's existing telecommunications services, exactly as those telecommunications services are provided to the ILEC's retail customers. Thus, the Reseller is not required to have technical and operational expertise. A Reseller typically will not distinguish itself based on operational or technical capabilities; instead, it will attempt to distinguish itself based on superior marketing, customer servicing, or its ability to provide and package non-local exchange telecommunications services.

A Reseller's primary obligation is to provide end user customer servicing and billing. The ILEC provides only the information the Reseller needs to bill its customers. The Reseller must determine how and at what prices it will bill its customers.[12] For example, the Reseller could offer different billing options for its customers and could offer both different prices and pricing plans than those offered by the ILEC. Significantly, however, the ILEC only bills the Reseller (at wholesale rates) for the telecommunications services that the Reseller orders

[12]Contrary to AT&T's recent assertions, a Reseller is not required to mirror the rate structures and pricing of the ILEC. Resellers use alternative pricing plans and prices as a way to distinguish themselves from the ILEC. Moreover, AT&T's sudden disfavor for "mirrored" Resale rate structures is hypocritical. Initially, Ameritech had proposed non-mirrored, postalized rate structures for Resale Services. AT&T vehemently opposed such structures, making arguments directly contrary to those it now makes. *See* pages 23-26 of AT&T's Initial Brief filed on April 13, 1996 in Illinois Commerce Commission Docket No. 95-0458/95-0531. A copy of AT&T's brief will be provided upon the Commission Staff's request.

and its customers use, thus virtually eliminating the risk that the Reseller will have to pay for services or facilities that its customers may not demand.

Resale provides a quick market entry vehicle for a new local exchange provider, not only because Resale minimizes a local exchange provider's up-front capital investment, but because Resale allows for ubiquitous geographic coverage. With Resale, a local exchange provider may offer services everywhere the ILEC offers such services, and thus may effectively use mass-market advertising such as newspaper or television, which cover a wide geographic area. In addition, a Reseller does not need to establish Interconnection with the ILEC or other local exchange providers; it relies on the ILEC to arrange for such Interconnection so that the Reseller's customers may receive and place calls to other local exchange providers' customers.

For those reasons, a new local exchange provider often uses Resale as an initial market-entry vehicle.[13] Resale enables a provider to quickly gain customers and then, when that provider has a sufficient number of customers in the same geographic area, it can begin providing facilities-based services to such customers. Such a migration strategy enables a new local exchange

[13] By analogy, Sprint became the first of AT&T's long distance competitors to offer nationwide long distance service by reselling AT&T's outbound Wide Area Telephone Service (WATS).

provider to reduce its entry risks and to effectively manage and stage its capital investments.[14]

II. Facilities-Based Provision of Local Exchange Service

The other principal method for providing local exchange service requires a local exchange provider to use either its own facilities, or self-provided facilities in combination with those obtained from third parties (including an ILEC), to offer local exchange service to its customers. To promote facilities-based provision of local exchange service, the Act requires ILECs and all other telecommunications carriers to provide Interconnection (so that a facilities-based local exchange provider's customers can receive and place calls to the ILEC's customers), and it also requires ILECs to provide access to certain unbundled Network Elements so that a facilities-based provider can obtain, from the ILEC, the facilities it needs to offer its telecommunications services.

---

[14] AT&T claims that it also needs this provisioning experience with customers' usage of local services so that it can design its own network. While such customer information can be obtained from that experience, it is certainly not the only way such information can be obtained. Most of the large business customers that AT&T or another new local exchange provider would initially target routinely provide information about their local (and long distance) telecommunications usage during the sales process. In addition, AT&T could request its new or prospective customers' service records to obtain this information. *See* Act, Section 222(c)(2). Obviously, AT&T would receive the same customer usage information if it purchased Resale Services.

Further, Ameritech disagrees that the science of engineering a carrier's initial local telecommunications network is as precise as AT&T suggests. Many carriers, including MFS and TCG, have been able to successfully design initial local networks for years without the need to rely on actual local exchange service experience. Indeed, Ameritech suspects that AT&T has already performed such local network design in each of the Ameritech states, as indicated from its selected method of Interconnection with Ameritech under each of the Interconnection Agreements. Although more detailed information concerning AT&T's local market entry plans may be proprietary, should AT&T continue to assert its alleged lack of ability to provide basic local network design information until it has actual customer experience, the Commission could quickly resolve this issue by requiring AT&T to provide any local network design information AT&T currently has developed.

Regarding the latter requirement, the FCC Rules and FCC Order permit a facilities-based provider to obtain all of the facilities that it needs to offer Local exchange service from the ILEC, and do not require a facilities-based provider to use any of its own facilities.[15] As discussed above, the combination of unbundled Network Elements that includes all the facilities, including Shared Transport, that a local exchange carrier needs to provide local exchange service is known as the unbundled Network Element Platform.

Facilities-based provision of local exchange service is different from Resale in several ways. First, a facilities-based provider of local exchange service is responsible for designing and engineering its local exchange network, regardless of whether it provides all of its own facilities or obtains some or all of those facilities from others. This requires a facilities-based provider to have operational or technical expertise, such as the ongoing ability to forecast the number and type of facilities and equipment needed to provide local exchange service.

In addition, a facilities-based provider, unlike a Reseller, can distinguish itself based on better facilities since a facilities-based provider may design its network differently from the ILEC's and may provide its services at either a higher or lesser quality than the ILEC.[16] Two examples of a facilities-based provider's attempt to distinguish such network capabilities would include: (1)

[15] Although Ameritech and other ILECs contend that the FCC Rules and FCC Order in this regard are inconsistent with the Act, Ameritech has agreed, subject to the outcome of the currently-pending appeal of the issue, to provide a combination of the FCC-required Network Elements and will not require a facilities-based provider to provide some of its own facilities.

Sprint's promotion of its allegedly superior fiber-based network (Sprint's "pin-drop" advertising campaign) and (2) AT&T's promotion of the superior voice-grade quality of its network (AT&T's "True Voice" advertising campaign, featuring Whitney Houston).

Second, a facilities-based provider, particularly a facilities-based provider that utilizes its own switching functionalities has the ability to offer services to its customers that the ILEC cannot provide, or chooses not to provide, to its customers.[17] For example, an ILEC's switches may not be able to provide certain services that a new local exchange provider's switches can provide, or an ILEC's switches may be able to provide such services if it purchased additional software from the switch manufacturer, but the ILEC has chosen not to purchase such software.

Third, because a facilities-based provider must determine the design and engineering of its network, including, but not limited to, the quantities of facilities and equipment needed for its network, it makes the decision about the quantity and location of the facilities and equipment it needs to provide services to its customers. In all cases, some custom, manual work is required to provision those Network Elements consistent with the provider's selected network design and to connect those Network Elements to the provider's existing facilities.[18]

---

[16] *See* 47 C.F.R. Section 51.311(c).

[17] Such an ability is not limited to switching. For example, a facilities-based provider that provides its own Loops may offer Loop types that an ILEC does not provide, such as Loops capable of high-speed data transmission or supporting full motion video services.

[18] Paragraph 421 of the FCC Order discusses some of these differences.

Fourth, and somewhat obviously, a facilities-based provider's offering of local exchange service, unlike a Reseller's, is limited to the locations at which it has facilities. For example, a facilities-based provider cannot offer services in areas in which it does not have or has not obtained from a third-party, trunk-side network facilities. For some facilities-based providers who choose to serve only limited geographic areas, such as the central office business district of a large city, and thus do not choose to serve all customers, this geographic limitation does not hinder their business plans in any way: they can provide service only to those customers in a geographic area they select, but those customers can receive and place calls to subscribers of other providers because of the Act's requirement that all telecommunications providers Interconnect with other requesting carriers.

The Difference Between Resale Services and Network Elements

Just as there are key differences between the provision of local exchange service on a Resale basis and provision of local exchange service on a facilities basis, there are similar key differences between Resale Services and Network Elements. The essence of those differences is that Resale Services are "services" and Network Elements are "facilities" or "piece parts" of the network.[19]

The FCC recognized precisely this distinction in the FCC Order:

[19] The difference between a facility and a service is demonstrated by a simple analogy, the difference between renting or leasing an automobile, and hiring a taxi service. While it is true that both use the same facility, an automobile, the taxi service provides more than just that facility—it also provides many more things that make it a service. If I rent or lease an automobile I have additional responsibilities that I do not have if I use a taxi service. In return, I would expect that the price of renting an automobile is generally less than using a taxi service. So, too, it is with Network Elements (the automobile) and Resale Services (the taxi service).

> We believe that sections 251(c)(3) [Network Elements] and 251(c)(4) [Resale] present different opportunities, risks and costs in connection with entry into local telephone markets, and that these differences will influence the entry strategies of potential competitors.
>
> If a carrier taking unbundled elements may have greater competitive opportunities than carriers offering services available for resale, they also face greater risks. A carrier purchasing unbundled elements must pay for the cost of that facility, pursuant to the terms and conditions agreed to in negotiations or ordered by states in arbitrations. It thus faces the risk that end-user customers will not demand a sufficient number of services using that facility for the carrier to recoup its cost. A carrier that resells an incumbent LEC's services does not face that same risk.

FCC Order at Paragraphs 332 and 334. *See also* FCC Order at Paragraph 980 ("Resale, as defined in section 251(b)(1) and 251(c) (4), involves services, in contrast to section 251(c)(3), which governs sale of network elements.")

A good summary of some, but not all of these differences was in the recent testimony of an MCI witness in Illinois. In response to the question: "What is the difference between providing local service via unbundled local switching and resale . . .?", MCI witness Carl Giesy provided the following response:

> There's a big difference that can be summarized by saying that one is a network-based approach and the other is a service-based approach. Using unbundled local switching to provide service should be conceptually similar to a new entrant installing its own switch and using that switch to provide service. As a result, given the definition of unbundled local switching, the new entrant should be able to use the leased switching capability to design its own services, just as it would use its own (owned) switching capability to design its own services. Also, when priced properly, using TELRIC principles, unbundled local switching offers the new entrant an underlying cost structure that is similar to that faced by any facilities-based local provider.
>
> The trade-off for this flexibility is that the new entrant will also need to "engineer" this network to ensure that it has all the necessary

> piece-parts in all the necessary quantities to provide local service (e.g. loops and transport), that it has properly interconnected with the incumbent LEC and with interexchange carriers, and so forth.
>
> In contrast, resale is much simpler, in that there is nothing for the new entrant to "engineer." A trade-off, however, is that the new entrant that uses resale is less able to design products for end users that are different from the products offered by the incumbent. In addition, because resellers are "tied" to the incumbent LEC's retail products, the resellers are also "tied" to the incumbent LEC's retail price and price structure.[20] In other words, the resellers [sic] underlying cost structure is based on the incumbent LEC's retail structure.

Testimony of Carl D. Giesy on Behalf of MCI Telecommunications Corporation, Docket Nos. 96-0486/96-0569 (March 7, 1997) at 6-7.

AT&T wants the benefits of both Network Elements and Resale, without the corresponding risks of either. The only way AT&T can hope to accomplish this result is to unilaterally proclaim that Resale Services are Network Elements.

The Act, the FCC Rules and the FCC Order recognize the fundamental difference between Resale Services and Network Elements. The Act's Resale requirement states that an ILEC has the duty to permit requesting carriers to resell the ILEC's telecommunications services. In contrast, the Act requires an ILEC to provide access to unbundled Network Elements so that a requesting carrier can use such Network Elements to provide its own telecommunications services. Moreover, the Act's definition of a Network Element also recognizes

[20]As demonstrated in n.12, *supra*, the implication that a Reseller must mirror the ILEC's price structure is simply wrong.

this distinction. A Network Element is defined as a "facility or equipment used in the provision of a telecommunications service."[21] (emphasis added)

The distinction between Resale Services and Network Elements is so fundamental that it is reprised throughout the Act. The Act's joint marketing restriction rests on this distinction: it prohibits large interexchange carriers from jointly marketing their long distance services with Resale Services purchased from an ILEC, but permits such joint marketing when an interexchange carrier is purchasing an ILEC's Network Elements.[22]

Most importantly, this distinction is reflected in the two very different, Act-imposed pricing standards for Resale Services and Network Elements. An ILEC must provide Resale Services at its retail price less the cost the ILEC avoids by selling those services at wholesale rather at retail (*i.e.*, the costs for retail marketing, billing and customer service that the Reseller, and not the ILEC, will perform).[23] However, Network Elements must be priced at their cost plus a reasonable profit.[24] This difference in the pricing standards is entirely consistent with the fundamental distinction between Resale Services as "services" and Network Elements as "facilities."

Paragraph 678 of the FCC order provides one key example of that difference. In describing the differences between TELRIC methodology for

---

[21] Act, Section 3(29).

[22] Act, Section 271(e).

[23] Act, Section 252(d)(3).

[24] Act, Section 252(d)(1).

pricing Network Elements and previously-used TSLRIC methodology for determining prices for services, the FCC stated:

> The cost of local loops and their associated line cards in local switches, for example, are common with respect to interstate access service and local exchange service, because once these facilities are installed to provide one service they are able to provide the other at no additional cost. By contrast, the network elements, as we have defined them, largely correspond to distinct network facilities. Therefore the amount of joint and common cost that must be allocated among separate offerings is likely to be much smaller using a TELRIC methodology rather than a TSLRIC approach that measures the costs of conventional services.

Finally, consistent with the Act, the FCC Rules and the FCC Order, because an ILEC is providing Exchange Access service to a Reseller when it provides Resale Services, the ILEC is entitled to access charges for providing such access. In contrast, a facilities-based provider is entitled to access charges when it provides Exchange Access service to an interexchange carrier using facilities it provides itself or Network Elements it purchases from an ILEC.[25]

Shared Transport and the Network Platform: Framing the Issues

The issues regarding the product definition of Shared Transport arose in the context of AT&T's request for the Network Element Platform. When AT&T placed its initial orders for the Network Element Platform, it requested the Network Element Platform by designating it as a "Footprint" and provided only the name of the state in which AT&T wanted such a Footprint. AT&T did not provide to Ameritech any other ordering information specifying the Network Elements that comprised the Network Element Platform other than information

[25] *See* FCC Order at Paragraph 980.

identifying those Ameritech retail customers whom AT&T wanted to be switched to its Network Element Platform.

Discussions between Ameritech and AT&T revealed, as did AT&T's subsequently filed lawsuits challenging the Interconnection Agreements, that AT&T was interpreting "Shared Transport" as provided in the Interconnection Agreements to mean "Common Transport," an Exchange Access service that Ameritech and other ILECs (and LECs) provide to interexchange carriers. AT&T contends that the term "Shared Transport" in the Interconnection Agreements and the FCC Rules and FCC Order is synonymous with "Common Transport" service. Ameritech disagrees and believes that "Shared Transport" and "Common Transport" service are not the same. Ameritech believes that what AT&T is requesting when it asks for what it defines as "Common Transport" is not an unbundled Network Element at all, but rather, is a telecommunications service that Ameritech makes available pursuant to its Resale obligation under the Act.

Why is this issue so important? Why did AT&T raise this issue only as part of discussions related to the Network Element Platform? Why is this an issue that is primarily raised by the large interexchange carriers and not facilities-based local exchange service providers? The answers to these questions stem from the different financial and legal differences between Resale and Network Elements under the Act.

As discussed above, there are three principal financial and legal differences between Resale and Network Elements under the Act: (1) price, (2)

access charges, and (3) joint marketing. If AT&T is successful at classifying the Network Element Platform, including its definition of Common Transport service, as Network Elements, AT&T will obtain the benefit of lower Network Element pricing, will avoid paying access charges, and will be permitted to jointly market the Network Element Platform with AT&T's long distance services. Put another way, AT&T's attempt to re-classify what it has admitted is not functionally different from Resale is nothing less than a "have your cake and eat it, too" strategy. If AT&T is successful, it would obtain all the functional benefits from purchasing Resale Services (without the corresponding pricing and regulatory treatment that apply to Resale Services), and also obtain all the pricing and legal benefits from treating such a purchase as Network Elements (again, without recognizing the corresponding obligations related to the purchase of Network Elements). For the reasons that follow, Ameritech believes that AT&T's attempt is flatly inconsistent with the Interconnection Agreements, the Act, the FCC Rules and the FCC Order, and must be rejected.

Undisputed Principles

To narrow the scope of the debate and the issues, following is a list of items as to which Ameritech believes there is no, or cannot reasonable be a, dispute. Ameritech believes that many of these items have been raised as "red herrings" in this debate and believes that they should be put to the side as no longer relevant.

1. Ameritech's Position on Combinations. Ameritech is not refusing to provide combinations of Network Elements to AT&T. Ameritech will provide Network Elements to AT&T consistent with the terms of the Interconnection Agreements. The currently pending Eighth Circuit appeal will resolve the issue of whether Ameritech and other ILECs are required to offer the combination of all Network Elements known as the Network Element Platform. Ameritech will provide the Network Element Platform to AT&T and other carriers, subject to the outcome of that or any other appeal. Ameritech believes that the current debate concerning Shared Transport as part of the Network Element Platform will be resolved if the Eighth Circuit concludes that an ILEC is not required to provide the Network Element Platform. If, however, the Eighth Circuit concludes that an ILEC is required to make the Network Element Platform available, the issue regarding the definition of Shared Transport when it is part of that Network Element Platform will still need to be resolved.

2. Uniform Definition of Network Elements. Ameritech believes that there is no dispute that the definition of a Network Element is the same when the Network Element is provided either separately or as part of a combination of Network Elements. Put another way, the definition of a Network Element does not change when it is provided as part of a combination of other Network Elements.

3. Network Elements Must be Provided on an Unbundled Basis. An ILEC must offer all Network Elements, including Shared Transport, in a manner

that allows a local exchange provider to connect its own facilities to that Network Element. See, e.g. 47 C.F.R. Sec. 51.319(d)(2)(iii).

4. Shared Transport must be Unbundled from Switching. Section 271(c)(2)(B)(v) of the Act requires that Interoffice Transport, which includes Shared Transport, must be unbundled from switching or other services.

5. Resale Services and Network Elements are Not Synonymous. The Act, the FCC Rules and the FCC Order each recognize that Resale Services and Network Elements are different from each other, and thus different terms and conditions apply to an ILECs' offering of Resale Services and its offering of Network Elements. If a service is a Resale Service, a requesting carrier cannot unilaterally elect to designate that service as a Network Element.

6. Act Governs Over FCC Rules and FCC Order; FCC Rules Govern over FCC Order. Under well-established principles of statutory construction, if there is a conflict between an act, and a regulatory agency's implementing rules and orders, the act governs over the rules and orders and the rules govern over the orders.

7. Differences in Regulatory Treatment of Resale vs. Network Elements:

Issue	Resale	Network Element
Pricing Standard	Retail less Avoided Cost	Cost plus a Reasonable Profit
Access Charge Treatment	ILEC entitled to access charges	Network Element Provider entitled to access charges for Exchange Access provided using Network Elements
Joint Marketing Restriction Applicability	Applies	Does Not Apply

8. It's the Substance, not the Label, that Matters. There has admittedly been some confusion over whether the "shared" version of the Interoffice Transport Network Element should be labeled "shared" or whether it should be labeled "common." While the FCC Rules always used the term "shared" to describe this version of Interoffice Transport, and the FCC Order used the term "shared" in all but one occasion, there is a single, isolated instance in the FCC Order, specifically at Paragraph 258, in which the FCC used

the term "common" to refer to the shared version of Interoffice Transport.[26] Ameritech also mistakenly used that term in very early drafts of proposed Interconnection Agreements.

However, it's important not to fixate on the label, but to focus instead on the substance. The description of Shared Transport in the Interconnection Agreements, even when mistakenly labeled "common" in an early draft, always described the same concept, *i.e.*, Interoffice Transport unbundled from switching and other services: the same concept of Shared Transport described in the FCC Rules. Thus, Ameritech suggests that, rather than focusing on the label, the parties should focus on the substance. That substance, as will be discussed further below, clearly demonstrates that Ameritech's interpretation of Shared Transport is consistent with the Interconnection Agreements, the Act, the FCC Rules and the FCC Order.

Ameritech's Shared Transport and Network Platform Offerings

Ameritech's Shared Transport and Network Element Platform offerings fully comply with the Act, the FCC Rules and the FCC Order.

Shared Transport

Ameritech's description of its Shared Transport offering is in Schedule 9.2.4 of the Interconnection Agreement. AT&T voluntarily agreed to that description, *i.e.*, this was not an arbitrated issue. That description fully complies with the FCC Rules and FCC Order: it provides that Shared Transport is

[26]Under item 6, *supra*, statutory interpretation would conclude that the FCC Rules' consistent reference to "shared" would prevail over the FCC Order's usage of "common" in a single place in the FCC Order.

unbundled from switching and other services, and Shared Transport is provided in such a way to allow AT&T to connect Shared Transport to AT&T's collocated facilities. Ameritech offers such Shared Transport between the locations described in each of Schedule 9.2.4 of the Interconnection Agreement, Section 51.319(d)(1) of the FCC Rules and Paragraph 440 of the FCC Order.

AT&T and others raised two issues about Ameritech's initial offering of Shared Transport, both of which issues have been resolved. First, Ameritech took the position that Shared Transport facilities could be shared by any requesting carrier, except Ameritech. Second, Ameritech proposed that pricing for Shared Transport be based on the Dedicated Transport rates divided by the percentages of use of each sharing carrier. Ameritech subsequently modified its position to permit sharing of Shared Transport facilities with Ameritech and, although not required to do so by the Act, has proposed a new pricing alternative for Shared Transport that includes an option for per minute of use pricing.

Ameritech proposed that option—"Shared Company Transport"—to address concerns that the other unbundled transport arrangements that Ameritech makes available were not affordable. Those other arrangements required use of facilities at a DS-1 or higher transmission level. Although DS-1s are readily affordable by large carriers with significant traffic volumes, Shared Company Transport is intended to make use of interoffice transport facilities

equally feasible for smaller carriers with lesser traffic volumes and/or carriers which are just beginning to provide local exchange service.[27]

Under the Shared Company Transport arrangement, a carrier would specify any number of trunks up to a total of 23 to be activated between any two Ameritech offices.[28] The carrier can pay for these facilities-based on either a flat rate monthly charge that is 1/24th of the DS-1 rate for each trunk or on a usage basis, which is derived by dividing the DS-1 Dedicated Transport rate by 9000, the assumed minutes of use per month that the FCC has adopted. This option will reduce some of the network engineering burden and risks associated with other interoffice transport options, without violating the principles that apply to Network Elements in the Act and FCC Rules. Among those principles is the requirement that AT&T and other carriers will need to designate the Ameritech offices between which it requires such transport and that Shared Company Transport must be provided in such a way to comply with the Act requirement that it can be connected to a requesting carrier's collocation facilities.

Network Element Platform

Ameritech offers the Network Element Platform consistent with Schedule 9.3.4 of the Interconnection Agreement. The Network Element Platform is comprised of various quantities of the Network Elements that are listed in that Schedule, and the ordering mechanism for the Network Element Platform is

[27] Even though this option is designed for smaller carriers, Ameritech will offer this option to all carriers, including large carriers like AT&T.

[28] At 24 trunks, the carrier would subscribe to a DS-1, which provides the equivalent of 24 voice-grade channels.

provided in Schedule 9.2.6 of the Interconnection Agreement. Ameritech will, consistent with Section 51.315(c) of the FCC Rules, combine the listed Network Elements in the ordered quantities in a manner consistent with the requirement that such Network Elements be provided so as not to impair the ability of other carriers to gain access to such Network Elements or to Interconnect with Ameritech.

Also consistent with the Interconnection Agreement,[29] Ameritech will accept orders for the Network Element Platform using the existing Access Service Request (ASR) Interface, based on information AT&T supplies about the Network Elements and combinations of Network Elements which AT&T intends to order in a specific Ameritech Wire Center. The Agreement refers to this detailed ordering information as the "Footprint" or "Trunk Side Information."

To order the Network Element Platform, AT&T need only provide this "Trunk Side Information" once in each geographic area when and where it initially orders the Platform. AT&T would then add customers to the Network Element Platform by placing an order for Loops and additional Unbundled Local Switching Line Ports, just as it would if AT&T were purchasing only Loops and Unbundled Local Switching. AT&T need not place orders for the trunk-side Network Elements that are part of the Network Elements Platform with every end-user customer order. Again, AT&T needs only to provide that information at

---

[29] *See* Interconnection Agreement at Schedule 9.2.6, Section 1.0.